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Forty-fourth session

SUMMARY RECORD OF THE 1134th MEETING

Held at Headquarters, New York,
on Wednesday, 1 April 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. EL-SHAFEI (Vice-Chairman)

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Peru (CCPR/C/51/Add.4) (continued)

1. At the invitation of the Chairman, Mr. Lazaro and Ms. Vargas (Peru) took places at the Committee table.

2. The CHAIRMAN said that the Peruvian delegation would proceed to answer the questions raised at the previous meeting from section I of the list of issues.

3. Mr. LAZARO (Peru) expressed appreciation to the members of the Committee for their comments on the report. His Government attached great value to its dialogue with the Committee. In raising their concerns, the members of the Committee had referred to a number of issues of a social and economic nature. Furthermore, they had acknowledged that one of the main obstacles to the full implementation of the rule of law in his country was the persistence of terrorist activity. From his Government's point of view, the entire situation of civil and political rights must be seen in that context.

4. Peru had a long tradition of democracy, not only in letter but in spirit. Peruvians had demonstrated their fierce attachment to democratic ideals by going to the polls in the face of threats, assassinations and other obstacles. There was a widespread awareness that civil and political rights could be preserved and protected only in a democratic State. That was the background against which any statements concerning the existence of violence and chaos in his country should be seen.

5. During the 1980s, Peru had embarked upon the modernization of its economy, a process which went hand in hand with the vitality of its democratic institutions. However, since then, his Government had faced a growing emergency because of the actions of terrorist groups, such as the Shining Path (Sendero Luminoso), whose goals and objectives, and wholesale rejection of civil and political rights, left no room for doubt. Lest anyone think that his characterization of that organization was biased, he drew attention to a report presented by the United States Assistant Secretary of State for Latin American Affairs to a subcommittee of the House of Representatives in March 1992. The report described the terror tactics used by the Shining Path to disrupt electoral processes and to intimidate candidates for local office, noting that terrorism of that type often succeeded.

6. Accordingly, so-called "terrorism from above" should be placed in its proper context. His Government did not have a policy of systematic violations of human rights. While mistakes could be and had been made, respect for human life was the cornerstone of Peru's democratic system. However, the Government

(Mr. Lazaro, Peru)

was facing a new phenomenon - an adversary who chose unconventional methods. While democratic institutions must be defended it was necessary to introduce corrective measures and to punish those found guilty of infringements of human rights.

7. Moreover, the situation in Peru could not be viewed in isolation from the international context. Peru was developing its economy with assistance from the international community. His Government was aware that the situation of the rural population required wide-ranging efforts. While the strategy of alternative development in coca-growing areas had received much attention, it would be viable only with organized political participation by the coca growers.

8. Ms. VARGAS (Peru), replying to the query in paragraph (e) of section I of the list of issues, said that the rights in question involved personal freedom and security, the inviolability of the home and freedom of association and movement. However, those rights had not been derogated from, but merely suspended for a period of 60 days, which could be extended by the President of the Republic with the consent of the Council of Ministers.

9. With regard to excesses committed during the states of emergency by members of the armed forces and national police, instances of that nature had been closely scrutinized by the Supreme Council of Military Justice and the civilian justice system. From August 1989 to July 1991, 37 members of the Peruvian army had been punished by their service or by the Supreme Council of Military Justice for human rights violations, and two cases involving members of the navy were currently under investigation. The adoption of the new Code of Penal Procedure would strengthen her Government's determination to bring those guilty of human rights violations to justice.

10. With regard to paragraph (d), laws were enacted by Congress and promulgated by the President of the Republic, while a legislative decree required a special act of Congress, giving the President the authority to legislate on specific issues for a determinate period.

11. In reply to the question concerning the difficulties encountered in implementing rights under the Covenant, she said that they varied considerably. There were logistical problems, such as the lack of infrastructure; difficulties stemming from the low salaries paid to officials of the judicial branch; and procedural difficulties, as shown by the fact that her Government had been applying a Code of Civil Procedure dating from 1936 and a Code of Penal Procedure dating from 1928. In 1991, new codes had been promulgated; while they might not be complete in all areas, they reflected a commitment to defending human rights.

12. In reply to the question concerning military-political commands, she said that it was sometimes necessary to establish that form of administration in order to restore order in areas where the civilian authorities had either been

(Ms. Vargas, Peru)

assassinated or threatened by members of terrorist groups. However, the Government, specifically the President of the Republic, had overall responsibility for the maintenance of law and order.

13. The Senate had recently approved a law amending the provisions of Act 24.150 concerning states of emergency, which empowered the armed forces to take control of internal order and establish military-political commands. The new law gave the political authorities full rights in the emergency zones and reaffirmed the authority of regional governments as part of an anti-terrorist strategy aimed at establishing communication and coordination between the authorities and military commands in the emergency zones and strengthening the State's authority in those zones. With regard to the question concerning states of siege, she pointed out that a state of siege applied to the whole of the country's territory and could be established in the event of invasion, foreign war or civil war, or if there was imminent danger that such situations might occur. Under article 231 of the Constitution, the President was required to specify, with the approval of Congress, which individual rights would remain in force.

14. In connection with the right of insurgency and the question of why armed groups in Peru were referred to as terrorists and not insurgents, she replied that the Shining Path and Tupac Amarú movements could not be described as insurgents because they were seeking to establish totalitarian and anti-democratic regimes and showed no respect for human rights.

15. Mr. LAZARO (Peru), replying to questions concerning preventive habeas corpus, referred to article 295 of the Constitution, which stipulated that a threat to individual liberty deriving from action or omission by any authority, official or individual was grounds for an action of habeas corpus. That provision had been incorporated into national law and was applied by the Peruvian Government.

16. On the question of the delegation of powers, he pointed out that the authority to legislate could be delegated to the executive under article 188 of the Constitution. That was not an extraordinary or exceptional measure and no special procedures were required. However, the authorizing law must specify the matters to be covered by the delegation of powers and the duration of the period in question. The President was required to report to Congress on legislative decrees issued in exercise of delegated powers. Such decrees had the force of law and, like ordinary laws, could be challenged as unconstitutional in an action brought before the Court of Constitutional Guarantees.

17. He confirmed that measures were being taken to strengthen the legal system and cited the example of the conclusions reached at the recent summit meeting on the drug problem held at San Antonio, Texas, concerning the strengthening of the administration of justice and legal cooperation for the purpose of combating drugs trafficking.

(Mr. Lazaro, Peru)

18. With regard to the difficulties encountered in implementing the rights provided for in the Covenant, the main problems were lack of logistical support and infrastructure, the low salaries paid to the judiciary and the dangers involved in serving as a judge in Peru. The Government was aware of the shortcomings of the judiciary and was attempting to tackle the problem. For the third year in succession, assistance was being provided by the United States Agency for International Development (USAID) and a sum of $3.4 million had been made available for a programme for the administration of justice, to help improve cooperation between prosecuting judges, increase access to legal services, establish legal aid offices and improve court information systems. Judges, prosecutors and police were being trained in investigatory procedures and a pilot human rights course for police was planned for the following year.

19. Ms. VARGAS (Peru), replying to questions concerning the independence of the judiciary, said that under the Constitution the National Council of the Magistracy was responsible for making proposals to the President for the appointment of judges, while the Supreme Court investigated the functioning of the judiciary and the national office for monitoring the judiciary was responsible for investigating judicial conduct. The composition of the National Council of the Magistracy, which included representatives of the Supreme Court, bar associations and university faculties, was a guarantee of its independence.

20. With regard to the rights of citizens in emergency zones, a legislative decree had been enacted to authorize prosecutors to visit police stations, military installations and other detention centres to monitor the situation of detainees and investigate alleged disappearances. The authorities would attempt to investigate all allegations concerning disappearances.

21. Mr. LAZARO (Peru), returning to the question of habeas corpus, said that the situation would be improved by a bill now before the Senate designed to overcome shortcomings in national legislation and ensure that the right of habeas corpus would be fully enjoyed.

22. Finally, he pointed out that the Council for Peace in Peru, established in 1991, would be submitting a national peace plan to the executive before the middle of April, which would include proposals to ensure the full observance of civil and political rights in Peru.

23. Mr. PRADO VALLEJO said that, in the armed struggle between insurgent terrorist groups and the Peruvian Government, many excesses had been committed on both sides. He wished to know whether the parties guilty of such excesses, especially agents of the State, had been found guilty and punished.

24. He wished to know what measures the Peruvian authorities had taken to overcome the problems referred to in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20). Perhaps Ms. Vargas could comment on Mr. Carlos Escobar Piñeda, a public prosecutor who had been

(Mr. Prado Vallejo)

relieved of his duties as a result of opposition in military circles. He had received so many threats after drawing attention to the excesses committed by the Peruvian army in the emergency zones that he had been forced to seek asylum in the United States. Prosecutors investigating human rights violations in the emergency zones continued to encounter obstruction on the part of the armed forces, and he wished to know what measures the Government was taking, or planned to take, to prevent such violations.

25. Mr. AGUILAR requested the Peruvian delegation to comment on the compatibility of the states of emergency with the provisions of the Covenant. Ms. Vargas had referred to four rights under the Covenant that had been suspended during states of emergency. However, she had said that, during states of siege, the Government of Peru stipulated only those rights that had not been suspended; that seemed to be incompatible with the Covenant.

26. He inquired whether a private citizen could institute proceedings in the appropriate court in order to have a law declared unconstitutional.

27. Mr. Lazaro had referred to the Government's efforts to strengthen the powers of the judiciary to combat drug trafficking. However, he had not referred to the difficulties the judiciary encountered in taking action against offences committed by the armed forces.

28. Mr. MAVROMMATIS said that, while the Committee had received many replies on factors and difficulties that Peru encountered in the implementation of the Covenant, the Peruvian delegation had not answered a number of general and specific questions. He suggested that the delegation should read the summary records of the meetings and submit written replies to the unanswered questions.

29. Ms. VARGAS (Peru) said that, on 3 September 1991, the Government had issued a decree that enabled prosecutors to enter police stations and detention centres in order to verify the status and ensure the safety of detainees or persons who had been reported missing. With respect to the question raised about Mr. Carlos Escobar Piñeda, the delegation would submit its answer in writing.

30. Mr. LAZARO (Peru) said that, according to the 1991 report of the Working Group on Enforced or Involuntary Disappearances, in 1990 there had been 231 cases of disappearances in Peru while, in 1991, that figure had fallen to 117. That difference reflected the Peruvian Government's efforts to promote compliance with the Covenant. Cases of alleged torture had fallen from 22 in 1990 to 7 in 1991. The number of cases in which the Government of Peru cooperated by providing one or more specific answers in cases of disappearances, had increased.

31. Ms. VARGAS (Peru) said that the constitutionality of a law could be challenged before the Court of Constitutional Guarantees by the President of the Republic, by 60 deputies or 20 senators or by a petition signed by 50,000 citizens whose signatures had been verified by the National Elections Tribunal.

32. Mr. LAZARO (Peru), replying to the comment made by Mr. Mavrommatis, said that the Peruvian delegation would read the summary records and provide written answers to those questions that had not been answered during the discussion.

Right to life, recognition as a person before the law, liberty and security of the person, prohibition of slavery and servitude, treatment of prisoners and other detainees (articles 6, 7, 8, 9, 10, 11 and 16 of the Covenant) (section II of the list of issues)

33. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Peru, namely: (a) measures taken to investigate cases of disappearances, extrajudicial executions or torture, and to prevent the recurrence of such acts; (b) rules and regulations governing the use of firearms by the police and security forces, and information on violations of those rules and regulations and on measures taken to prevent the recurrence of such violations; (c) current rate of infant mortality in Peru and the infant mortality rate among ethnic groups as compared with that of the general population; (d) concrete measures taken by the authorities to ensure the strict observance of article 7 of the Covenant, and information on whether or not confessions or testimony obtained under torture could be used in court proceedings; (e) clarification of the kinds of restriction on the liberty of the person provided for by law and for what purposes; (f) information on how quickly after arrest a person's family was informed; (g) information "on the policy of decriminalizing the inmates of prison institutions" as referred to in paragraph 48 (e) of the report; and (h) information on arrangements for the supervision of places of detention and on procedures for the submission and investigation of complaints.

34. Ms. VARGAS (Peru) said that disappearances, extrajudicial executions and torture or any other form of physical violence were offences, and those responsible were subject to the provisions of the Penal Code, the Code of Criminal Procedure and other enactments. In that regard, Legislative Decree No. 665 authorized representatives of the public prosecutor to enter police and military premises in order to ascertain the status and physical condition of detainees. The decree was designed to prevent disappearances. If any official or civil servant, mayor or administrator, fell victim to acts of terrorism or drug trafficking during their period of service, the members of the victim's family were entitled to benefits administered under the National Institute for Family Welfare.

35. Act 25054 contained provisions on the manufacture and sale of firearms and weapons used in war, and their possession and use by individuals. Ministerial Resolution No. 0179-90-IN/GE of 23 July 1989 established the requirements to be met by people who had a licence to possess firearms that

(Ms. Vargas, Peru)

were not military weapons. Decree-Law No. 19644 of 6 December 1972 provided that the personnel of police forces who used their weapons in accordance with regulations in the course of duty were exempt from penal, civil or administrative liability. Any violation of legislation on the possession and use of firearms was subject to the provisions of the Code of Military Justice and the Penal Code.

36. The Peruvian Government was aware of the need to give priority attention to the children of Peru, and it had prepared the Global Plan of Action for Children 1990-1995 in accordance with the provisions of the Convention on the Rights of the Child. Supreme Decree No. 012-91-JUS, had transferred the National Institute for Family Welfare from the judicial branch to the Presidency of the Council of Ministers in order to meet the needs of Peruvian children more quickly and effectively. With a view to assisting low-income families and, hence, children, the Government's budget included a section on support for grass-roots social organizations such as mothers' clubs (clubes de madres).

37. The infant mortality rate, originally as high as 60 per cent, had dropped substantially thanks to the $4 million provided by the United Nations Children's Fund (UNICEF) for programmes in the areas of infectious diseases and oral rehydration therapy.

38. According to article 2, paragraph 20 (j), of the Peruvian Constitution, statements obtained through the use of violence were not admissible, and whoever made use of violence in such cases was subject to criminal sanctions. Article 234 of the Constitution provided that no one could be subjected to torture or inhuman or degrading treatment and that anyone could petition a judge to order the immediate medical examination of a confined individual, if he believed that that person had been a victim of ill-treatment. In that regard, Law No. 23506 on habeas corpus and amparo contained provisions to ensure that ill-treatment was not used to extract confessions.

39. Article 231 of the Peruvian Constitution dealt with cases in which personal liberty was restricted. Under states of emergency, the constitutional guarantees relative to personal freedom and safety, the inviolability of the home, the freedom of assembly and movement mentioned in paragraphs 7, 9 and 10 and paragraph 20 (g) of article 2 of the Constitution, could be suspended.

40. In accordance with article 2, paragraph 20 (g), (h) and (i), no one could be arrested without written court order with a reason assigned by a judge or by the police authorities in a case of flagrante delicto. In such cases, the person in question was to be informed immediately and in writing of the reasons for his detention. Such person had the right to communicate with and be advised by an attorney of his choice from the time that he was charged or arrested by the authorities. No one could be held incommunicado except in a case indispensable for the investigation of a crime and such detention was

(Ms. Vargas, Peru)

subject to the conditions and time-limits prescribed by law. In all cases, the arrested individual must be placed, within 24 hours or the time necessary to travel the distance involved, at the disposal of the appropriate court.

41. With respect to the policy of rehabilitating prisoners, article 211, paragraph 12, of the Constitution stipulated that the President of the Republic had the power to execute and cause the execution of the sentences and decisions of the courts and tribunals. Through the National Prison Institute, the Ministry of Justice carried out the policy of decriminalizing inmates of prison institutions, which involved the granting of pardons to prisoners who through their behaviour had demonstrated that they were prepared to re-enter society.

42. Decree 665 authorized prosecutors to enter premises where individuals were being detained in order to ensure that their human rights were not being violated. If a detainee considered that his individual rights were being violated as a result of his arbitrary detention, he could invoke the remedies of habeas corpus and amparo.

43. Mr. HERNDL said that he was primarily concerned about the broad powers given to the military to combat terrorism. Under the state of emergency, the armed forces acted almost with impunity, applying the principle of collective responsibility and forcibly recruiting civilians for its tasks.

44. He inquired what measures had been taken - or could be taken - to prevent extrajudicial executions and disappearances. Moreover, the armed forces often resorted to torture in their military operations and during interrogations. While there had been a number of cases in which military personnel had been punished for excesses, all such cases had been tried and punished by military courts. He wished to know the nature of the convictions and whether any of the convicted persons had been pardoned.

45. In paragraphs 38 and 44 of the second periodic report, the Government indicated that the police in Peru were "trained to respect the Constitution and the national and international rules and regulations concerning the right to life" and that it was the Government's policy "to provide training in human rights for the police and the staff of prison institutions". Those two statements seemed somewhat exaggerated.

46. Paragraph 48 (d) stated that a person who had been arrested must be brought before the competent court within 24 hours, or as soon as distance permitted. He inquired whether that rule was applied in all operations conducted to combat terrorism and insurgency in the country.

47. The statement, in paragraph 52 of the report, that the Peruvian Penal Code was "fully in line with the international covenants regarding respect for the right of citizens who had been deprived of their freedom" was very general. He had studied the initial report of Peru and had found no reference

(Mr. Herndl)

to the segregation of detainees from convicted prisoners, and he inquired whether Peruvian law provided for the separation of those two categories of prisoners. The initial report of Peru indicated that young offenders between the ages of 18 and 21 were separated from other convicts. He wondered whether that was also the case for offenders under 18 years of age.

48. Mr. WENNERGREN requested clarification regarding the rights of the unborn child under Peruvian law. Specifically, he wished to know whether abortion was prohibited and, if so, how many illegal abortions took place each year, whether a woman having an abortion would be prosecuted, and if any exceptions were made. For example, there had been reports of many rapes, committed both by insurgents and by members of Government forces, and he wondered if the victims would be entitled to an abortion.

49. The exemption from criminal responsibility for abuse of power and unnecessary use of violence for a person acting under orders found in article 20 of the Penal Code gave him some concern. Similar provisions in the laws of other States parties had been found to be in violation of the Covenant. An individual who violated the law should be punished even if obeying orders. He wondered how that exemption was applied, and in how many instances.

50. A presidential decree of 1990 had restricted challenges to acts performed in an official capacity, and he would like to know more about its impact. Article 210 of the Constitution stated that the President could be charged for certain acts of treason only, but was otherwise immune to prosecution. He would welcome further explanation of that provision.

51. He wondered whether the assertions in paragraph 38 of the report were too categorical. Due to the difficult circumstances faced by Peru, some violations were unavoidable. The police might be trained to respect the Constitution and rules and regulations concerning the right to life, dignity and physical integrity for all persons in detention or under investigation, but he wondered if that training extended to the army also.

52. Miss CHANET said that the delegation of Peru had given statistics on the number of reported disappearances and had indicated that progress had been made in that area. She found it difficult to see how 114 disappearances could be considered progress, since even one would represent a serious human rights violation. It seemed too early for optimism.

53. Democracy did not consist simply in a system of elections and a constitution. True democracy would not exist until the rule of law prevailed, and could not include a military or paramilitary force superior to the Government.

(Miss Chanet)

54. It appeared that the exemption from responsibility accorded to officials when acting under orders would guarantee immunity to some members of the police and armed forces. She wondered if any action ordered, whether a massacre, torture or an extrajudicial execution would be fully exonerated. Clarification was needed regarding the government circular stating that all terrorists were to be executed in the zones under military control. More information on forced conscription into the militia would also be welcome. With respect to article 9 of the Covenant, she would like to know if the time within which a person arrested must be brought before the competent court was limited or unlimited, since the wording "as soon as distance permits" used in paragraph 48 (d) of the report seemed open-ended.

55. Mr. FODOR said that, with regard to Covenant article 10 on the treatment of prisoners, he would welcome information on prison conditions, including sanitary conditions, health care and nutrition of detainees. He wondered how widespread the reported instances of harsh treatment were, and whether there were any statistics on the numbers of complaints made by prisoners about their treatment.

56. Mr. SADI said that it was encouraging that the delegation had admitted that some excesses had occurred and had explained that it was the policy to investigate them. However, the low proportion of successful investigations suggested that no serious effort was being made in that area. He wondered if the leadership had spoken out publicly against the abuse of power. He would welcome more information on government policy and its expression at the highest levels. As long as excesses were allowed to continue, they would provide ammunition to the opposition and to terrorist groups. The Government must take a more definite stand on excesses. If it did not, there would be doubts whether the political will existed to fight them.

57. Mr. AGUILAR said that as the right to life was the most essential right embodied in the Covenant, more ample information should have been provided on that subject. He shared the concerns expressed by other members about the functioning of the legal system. The constitutional provisions were very modern, even exemplary, but the difficulty lay in their implementation or lack thereof. The new Penal Code in particular did not seem to be applied to the armed forces and the police.

58. According to reports and - commendably - by the Government's own admission, execution, torture and unlawful detention were commonplace in the zones under military control. Death squads were also operating in such areas, where normally nothing escaped the notice of the military. He would like to know what had been done to investigate and prevent such cases.

59. More information was needed on the sweeping immunities that had been enjoyed by individuals tried by military courts. Many acts which constituted violations of articles 6, 7 and 9 of the Covenant were not regarded as criminal under the Code of Criminal Justice. He wondered if there were any plans to remove such offences from the jurisdiction of military tribunals.

(Mr. Aguilar)

60. The existence of civilian defence patrols raised many questions. There was an apparent pattern of abuse, since members were provided with weapons but no training, especially not about the rights of citizens. Individuals were often forced to join or suffer reprisals, even death.

61. It would be useful to have more details about lawful detention, since there were apparent discrepancies between the law and practice, particularly in the military control zones. For instance, over 5,000 disappearances had been reported in the decade ending in 1990, while the circumstances of only about 1,000 had been clarified. The fact that such disappearances had occurred confirmed that the legal requirements relating to detention were being violated. The suspension of the rights to personal freedom guaranteed under article 9 should also be clarified.

62. Investigations by public prosecutors had often been impeded and the investigators themselves had received threats. He wondered what guarantees and protection were afforded prosecutors to enable them to perform their functions. The concept of collective responsibility constituted a possible gross violation of article 14, and he wished to learn more about the decree permitting elimination of subversives.

The meeting rose at 1.05 p.m.